

R865. Tax Commission, Auditing.

R865-91. Income Tax.

R865-91-13. Pass-Through Entity Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

- (1) A pass-through entity must withhold and pay over to the state a tax on:
 - (a) the business income of the pass-through entity to the extent the business income is derived from Utah sources in accordance with Section 59-10-116; and
 - (b) the nonbusiness income of the pass-through entity derived from or connected with Utah sources.
- (i) "Nonbusiness income of the pass-through entity derived from or connected with Utah sources" does not include portfolio income if the income would not be reportable to Utah on the pass-through entity taxpayer's Utah state tax return or the Utah state tax return of any downstream pass-through entity taxpayer.
- (ii) "Downstream pass-through entity taxpayer" means a pass-through entity taxpayer that is a pass-through entity taxpayer of any entity that is itself a pass-through entity taxpayer.
- (2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:
 - (a) name;
 - (b) address;
 - (c) social security number;
 - (d) percentage of ownership in pass-through entity;
 - (e) Utah income attributable to that pass-through entity taxpayer; and
 - (f) amount of Utah tax withheld on behalf of that pass-through entity taxpayer.
- (3) The income of a pass-through entity that is an S corporation shall be calculated by:
 - (a) adding back to the line on the federal Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:
 - (i) charitable contributions;
 - (ii) total foreign taxes paid or accrued; and
 - (iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or
 - (b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the federal Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income/loss reconciliation" line shall be used for purposes of this rule.
- (4) A pass-through entity shall calculate the tax it is required to withhold on behalf of pass-through entity taxpayers by:
 - (a) multiplying the income of the pass-through entity computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and
 - (b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.
- (5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer of that pass-through entity if the pass-through entity taxpayer is:
 - (i) exempt from taxation under Section 59-7-102 and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;
 - (ii) an individual retirement account as defined under Section 408(a), Internal Revenue Code and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;
 - (iii) a real estate investment trust if all of the earnings of the real estate investment trust are distributed to the owners of the real estate investment trust; or
 - (iv) a person exempt from state income tax under Section 59-10-104.1.
- (6)(a) Subject to Subsection (6)(b), and for purposes of Subsection 59-10-1403.2(5), a pass-through entity shall apply to the commission for a waiver of penalty or interest, on an amount the pass-through entity fails to pay or withhold and for which the pass-through entity taxpayer files and pays in a timely manner, by checking the box on the tax return requesting the waiver for required withholding.
- (b) The provisions of Subsection (6)(a) shall be effective for taxable years beginning on or after January 1, 2010.
- (7) An entity that is disregarded for federal tax purposes is disregarded for purposes of pass-through entity withholding.
- (8) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.
- (9) Examples.
 - (a) Partnership A has two partners, both of whom are nonresident individuals exempt from state income tax under Section 59-10-104.1. Partnership A is not required to withhold Utah tax for these partners.
 - (b) For tax year 2010, Partnership C has two partners, Partnerships D and E. Partnership D has two partners, both Utah resident individuals. Partnership E has three nonresident partners, all of whom are subject to Utah state tax. Partnership C's responsibility for withholding is based on Partnerships D and E, not the partners of Partnerships D and E. Accordingly, Partnership C must withhold tax on behalf of Partnerships D and E. If, however, both Partnership D and the partners of Partnership D file returns and pay any tax due by the filing due date for Partnership C, including extensions, Partnership C may

elect to not withhold those amounts and may apply to the Tax Commission, by checking the box on the tax return requesting the waiver for required withholding, for a waiver of tax, penalty, and interest on amounts Partnership C should have collected and remitted for Partnership D, but did not.

KEY: historic preservation, income tax, tax returns, enterprise zones

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Authorizing, and Implemented or Interpreted Law: 59-10-116; 59-10-117; 59-10-118; 59-10-1403.2; 59-10-1405